

D570BOLS

Sentence

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

09 CR 1239

5 J. CHARLES BOLOGNA,

6 Defendant.

7 -----x

8 New York, N.Y.

9 May 7, 2013

2:30 p.m.

10
11 Before:

12 HON. P. KEVIN CASTEL,

13 District Judge

14
15 APPEARANCES

16 PREET BHARARA

United States Attorney for the

17 Southern District of New York

MIRIAM ROCAH

18 DANIEL S. GOLDMAN

Assistant United States Attorneys

19 ANDREW PATEL

20 Attorney for Defendant

21
22 Present: Victor Bruno

(Victim Impact Statement)

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(In open court; defendant present)

THE DEPUTY CLERK: All rise.

THE COURT: Please be seated.

THE DEPUTY CLERK: United States v. J. Charles
Bologna. Government ready?

MS. ROCAH: Miriam Rocah and Daniel Goldman for the
government.

THE COURT: Good afternoon, Ms. Rocah, and
Mr. Goldman.

MR. PATEL: Good afternoon, Andrew Patel for Mr.
Bologna.

THE COURT: Good afternoon mr. Patel. And good
afternoon, Mr. Bologna.

I'm going to go through the materials that I have, and
the question will be do I have everything that I should have.

MR. PATEL: Very good.

THE COURT: I have a presentence report,
recommendation, and addendum approved by Probation on
April 18th, 2013. I have a memorandum from the government,
which does not have a date on it, but it is 33 pages in length.
And I have a letter from you, with attachment, dated May 1,
2013, including the letter from the defendant's daughter.

Do I have everything I should have?

MR. PATEL: I believe you do, your Honor.

THE COURT: All right. Has the defendant, in fact,

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1 read, reviewed, and discussed with you the foregoing materials?

2 MR. PATEL: Yes.

3 THE COURT: Does the defendant have any objections to
4 the facts set forth in the presentence report?

5 MR. PATEL: No, your Honor.

6 THE COURT: Does the defendant have any objections to
7 the facts set forth in the government's sentencing memorandum?

8 MR. PATEL: No -- nothing, no significant objections,
9 your Honor.

10 THE COURT: Okay.

11 Ms. Rocah, do I have everything I should have?

12 MS. ROCAH: I believe so, your Honor; yes.

13 MR. PATEL: Does the government have any objections
14 to the facts set forth in the presentence report?

15 MS. ROCAH: No.

16 THE COURT: Mr. Patel, does the defendant have any
17 objections to the guidelines calculations set forth in the
18 presentence report?

19 MR. PATEL: No, your Honor.

20 THE COURT: All right. Let me inquire, before I hear
21 from Mr. Patel -- which would be the next order of business --
22 let me inquire -- and maybe I'm going to get the answer from
23 the presentence report. Am I correct, and is probation
24 correct, that no count of conviction carries a mandatory term,
25 a mandatory minimum?

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1 MS. ROCAH: That is correct, your Honor.

2 THE COURT: Okay. All right. Mr. Patel, I will give
3 you an opportunity to speak on behalf of the defendant,
4 followed by which I'll give the defendant a chance to speak.

5 MR. PATEL: Your Honor, I think there is no one more
6 aware of the results of Mr. Bologna's cooperation than your
7 Honor. You sat through two trials that are largely the result
8 of his work. The government's letter indicates that his
9 cooperation falls short of that which is required for a 5K
10 letter. And, yet, the benefit to the government and to society
11 at large for Mr. Bologna's cooperation are well established.

12 His cooperation, in a certain sense, still continues.
13 The FBI continues to call him, check on facts, ask him
14 questions, phone calls. He continues to do what he has done.

15 Your Honor, your Honor is aware from the presentence
16 report and my letter, that Mr. Bologna is neither young nor
17 well. And so I would ask your Honor to vary from the
18 guidelines and impose a sentence that will allow him to return
19 soon to his family, specifically his son-in-law who is the
20 husband of the daughter, Tara, who wrote the letter to your
21 Honor. And it is Mr. Bologna's intention to go live with them
22 and their children. And I would also like to introduce Mr.
23 Bologna's daughter, Kim, and her friend Suzanne, who are here
24 today to show their support.

25 As I said in the beginning, there is really no one who

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1 knows the success of Mr. Bologna's cooperation better than your
2 Honor, having had two trials conducted in this very courtroom.
3 He was not called as a witness, but he was there every day.

4 THE COURT: Well, Mr. Patel, the truth is, I know a
5 lot about his cooperation from presiding about these two
6 trials. I would disclaim knowing best. But I know a lot.

7 Thank you.

8 MR. PATEL: Your Honor, unless your Honor has any
9 questions, I would just ask you to impose a sentence that
10 allows him to return to his family. He will continue working
11 with the Bureau whenever he is needed. And I think that is a
12 fair and just sentence and complies with the requirements of.
13 18 U.S.C. 3553(a), in that as I mentioned in my letter, he can
14 never return to the life he led before.

15 THE COURT: Thank you.

16 MR. PATEL: Thank you.

17 THE COURT: Mr. Bologna, this is your opportunity to
18 speak, to address the Court directly, to bring to my attention
19 any facts or circumstances that you believe I should take
20 account of in passing sentence upon you today.

21 If there is anything you wish to say, this is the time
22 to say it.

23 MR. PATEL: Your Honor, Mr. Bologna did prepare a
24 short statement. May I ask that he be able to read his
25 statement from his chair?

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1 THE COURT: Granted.

2 MR. PATEL: Thank you very much, your Honor.

3 THE COURT: Granted.

4 THE DEFENDANT: Your Honor, could you hear me?

5 I'm a 72 year old man. I look back on my life and
6 have a lot of regrets. I was a good father to my children.
7 And I was always faithful to my wife. I never carried a gun.
8 And I was never violent. I feel terrible for the victim and
9 his family. To them, I am sorry, truly. Tried to do the right
10 thing by coming to the government, voluntarily. I want to make
11 good for the bad.

12 I, since I have been in prison, I have had strokes, I
13 am a diabetic, I have prostate cancer, and I have a number of
14 different ailments. Being sick in prison is torture, every day
15 I died a thousand deaths.

16 In that life I was always a money guy, but here, I got
17 involved with violent guys who did real bad things. I feel
18 horrible about it. And my conscience bothers me every day for
19 all of this.

20 I am sorry and ask for your mercy.

21 THE COURT: Thank you, Mr. Bologna.

22 This is the government's opportunity to speak.

23 MS. ROCAH: Your Honor, before that, I believe Victor
24 Bruno is here and would like to address the court.

25 THE COURT: All right, Mr. Bruno, come on up.

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1 MR. BRUNO: Thank you, your Honor.

2 THE COURT: The record should reflect that you have
3 appeared before me on prior occasions.

4 MR. BRUNO: Yes, I have.

5 THE COURT: In connection with sentencing of other
6 defendants.

7 MR. BRUNO: Yes.

8 And I want to apologize, in advance for the things I'm
9 about to say, to John Bologna's family, his daughters. I know
10 he spoke highly of them in my presence when we were younger,
11 10 years ago.

12 And I just want to say that, you know, in light of my
13 observation, well during the past trials, and the past
14 witnesses that you sentenced, you know, I don't feel that my
15 impact statement did any good. I mean you gave the guy that
16 helped murder my father, with this man, and Anthony Arillota,
17 you gave him five years, time served, 4 years time served.

18 THE COURT: Mr. Bruno, this opportunity is for you to
19 speak on the subject of the appropriate sentence and the impact
20 of the crimes of Mr. Bologna on you.

21 MR. BRUNO: Okay.

22 THE COURT: It is not an opportunity for you to
23 express your viewpoint on prior sentencing decisions made by
24 this Court.

25 MR. BRUNO: Okay. So, I apologize, your Honor.

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1 THE COURT: That's quite all right.

2 MR. BRUNO: Okay. So I had the opportunity to read
3 over the notes and the testimony and the government's
4 memorandum, presentencing report of John Bologna.

5 In these reports that I have went through, and the
6 notes of Anthony Arillota, and Felix Tranghese, and the other
7 defendants, John Bologna and Anthony Arillota were the
8 masterminds. They came, John Bologna came to Springfield with
9 the same idea that Anthony had: Let's take over. Let's take
10 Bruno out. You know. And what I really don't get is his 302
11 reports to his handler, from 2001 in his first arrival to
12 Springfield, how he describes the landscape, and this, and
13 that, about everything in Springfield. But, yet, he is allowed
14 to do whatever he wants. It is almost like he wore two hats,
15 he was a gangster and then he reported to his handler whatever
16 he felt was necessary.

17 You know, did anyone ever check with John Bologna
18 about his information status, talk about his murder plots? His
19 mishandling ultimately led to my father's death. Did the FBI,
20 did the Division of Inspection ever audit the New Jersey office
21 that handled John Bologna about his crimes he was committing
22 since 1996? Did anyone ever review the 302 reports since his
23 first visit to Springfield, 2001?

24 Well, I have. And I just can't see how it was missed.
25 My father was a decent man. No narcotics. He cared about his

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1 community. He cared about his family. Yes, he was in that
2 life. For whatever reason. But, he was a good man. He was my
3 father and I loved him.

4 I don't feel sorry, like Mr. Patel said John Bologna
5 is sick, he is dying, and whatever. My kids will never see my
6 father again. This has impacted me like I cannot describe to
7 you over the last 10 years.

8 And I have no remorse for Mr. Bologna. John Bologna
9 deserves life for what he has done. And I'm sure that there is
10 a lot more that he neglected to tell the government in his
11 lies. His greed. And to want to be a gangster with Anthony
12 Arillota, as they made a great team. They were cut from the
13 same cloth.

14 So for him to ask for mercy or leniency after doing
15 what he has done to my father, it's a disgrace.

16 Thank you, your Honor.

17 THE COURT: Thank you, Mr. Bruno.

18 This is the government's opportunity to speak.

19 MS. ROCAH: Your Honor, obviously Mr. Bologna is a
20 mixed bag. I think we have detailed both sides of that in the
21 letter. And, obviously, we're happy to answer any questions
22 you have, but I think we'll rely on the letter.

23 We have not moved for a 5K1 motion, but we have I
24 guess requested, or agreed to -- for a below-guidelines
25 sentence, albeit still a substantial sentence based on all the

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1 factors together.

2 THE COURT: Thank you, Ms. Rocah.

3 This is the Court's statement of reasons for the
4 sentence to be imposed on John Bologna.

5 In sentencing the defendant, I have considered all of
6 the materials referenced at the outset of this proceeding. I
7 have also considered the statements of Mr. Patel, and Ms. Rocah
8 this afternoon, as well as the statement of Mr. Bologna. And
9 the statement of Mr. Bruno, who is the son of Adolfo Bruno, who
10 was the victim of a murder, one of the substantive RICO acts to
11 which Mr. Bologna has entered a plea of guilty to, at least
12 RICO substantive, including conspiracy to murder Adolfo Bruno.

13 I have considered all of the factors set forth in
14 Section 3553(a), I need not recount all that I have considered,
15 but I will mention some of it.

16 First of all, to go through the crimes that Mr.
17 Bologna has entered a plea of guilty to RICO conspiracy, RICO
18 substantive -- that is count two -- with a number, six
19 specified racketeering acts; conspiracy to murder Adolfo Bruno
20 conspiracy to extort and extortion of James Santiello;
21 loansharking in connection with James Downey; operating an
22 illegal gambling business in Massachusetts and in New York; and
23 interstate travel in aid of racketeering.

24 Count three. Entered a plea of guilty to conspiring
25 to murder Adolfo Bruno in aid of racketeering.

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Count four, Interstate travel in aid of racketeering.
Counts five and six, extortion and extortion
conspiracy.

Counts seven and eight, loansharking.

And count nine, operating an illegal gambling
business.

Mr. Bologna, is not being sentenced today for his life
of crime, but he has led a life of crime. Going back to
running a substantial gambling operation and working with the
Gambino crime family, to his more recent activities beginning
around 1999 with the Genovese crime family.

And Mr. Bologna was never a made member of the
Genovese crime family, but as I came to learn through two
trials, he was the right-hand man to Arthur Nigro, who was in a
leadership position in the Genovese family. And Bologna helped
Nigro exert control. And Bologna would travel to Springfield
to communicate directions, to make inquiries, and to have a
basis to advise Arthur Nigro on the activities of the
Springfield crew.

Nigro urged -- was urged to induct Anthony Arillota
into the Genovese family, and to push Bruno to the side by
Bologna.

So Bologna was an important figure in supervising the
Springfield operation for Arthur Nigro.

Bologna did not give the order on the murder of Bruno,

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1 and did not play a role in the planning of the murder, but he
2 did follow up to make sure that the order was carried out.

3 Bologna had been a witness, or confidential witness I
4 guess working with the FBI at earlier points in time. But he
5 began proactively cooperating with regard to his Genovese and
6 Nigro related activities in or about October 2007.

7 He attended 11 proffer sessions with the government
8 between October '07 and December '09, and gave important
9 information to the government regarding the Bruno murder and
10 the participation of others in that murder.

11 He also engaged in consensually recorded phone calls
12 and wore a wire in having 100 calls and/or meetings with
13 assorted targets that were consensually recorded.

14 His consensual recordings were an important part of
15 the case against Louis Cherico. They were a part of, and I
16 would say significant, in the case against Arthur Nigro. And
17 certainly cannot discount that his cooperation brought down
18 others, as well.

19 The defendant was not candid and open in his
20 conversations with the government. Leaving out events, in one
21 instance, to cover for a family member. Minimizing his role in
22 various crimes. Failing to disclose important information
23 about the Dadabhai shooting. And his nondisclosures included
24 some instances of what could be excused as bad recollection or
25 misrecollection, but other important and significant instances

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1 of deliberately withholding.

2 The government has not made a 5K1.1 type application,
3 but it says in its memorandum because of Bologna's substantial
4 assistance, the government does not oppose a sentence somewhere
5 below the advisory guidelines in this case.

6 Defendant's cooperation led to pleas, early pleas of
7 Steve Alfisi, Mark Cairo, James and George Coumoutso. So there
8 was a benefit from it.

9 There is not a whole lot to be said about his life
10 outside of the criminal arena, other than to note that he is a
11 father who has children who have stood by him.

12 He has a number of serious physical ailments,
13 including prostate cancer, right knee damage, Type II diabetes,
14 and a recent history of mini strokes.

15 Knowing what the right answer in this case is, is not
16 an easy task. The guidelines -- while the statutory maximums
17 on counts one, two, five -- one, two, and five through eight,
18 are up to 20 years on each count, up to 10 years on
19 count three, and up to five years on counts four and nine. The
20 guideline range in this case is between 292 and 365 months
21 imprisonment.

22 The defendant has spent 30 months in prison.

23 Based upon all of the surrounding circumstances, I
24 conclude that a sentence of 96 months imprisonment is
25 sufficient, but not greater than necessary, to achieve the

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1 purposes of Section 3553(a), together with one year supervised
2 release and a special assessment of \$900.

3 Does the defendant have any objection to the Court's
4 proposed sentence or its statement of reasons for that
5 sentence?

6 MR. PATEL: No, your Honor, thank you.

7 THE COURT: Same question for the government.

8 MS. ROCAH: No, your Honor.

9 THE COURT: All right.

10 The defendant will please stand -- he can remain
11 seated, I take that back -- and the Court will impose sentence.

12 John Bologna, it is the judgment of this Court that
13 you are hereby remanded to the custody of the United States
14 Bureau of Prisons to be imprisoned for 96 months, as follows:

15 96 months on counts one, two, three, five, six, seven,
16 and eight to run concurrently with 60 months on counts four,
17 and nine.

18 Following release from imprisonment, you shall be
19 placed on supervised release for a period of one year on counts
20 one through nine, to run concurrently, with the following terms
21 and conditions:

22 You shall not commit another federal, state, or local
23 crime; nor illegally possess a controlled substance; nor
24 possess a firearm or destructive device. The mandatory drug
25 testing conditions are suspended based on the Court's

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1 determination that you possess a low risk of future substance
2 abuse.

3 You shall cooperate in the collection of DNA as
4 directed by the probation officer.

5 Standard conditions 1 through 13 are imposed with the
6 following special conditions:

7 You shall submit your person, residence, place of
8 business, vehicle, or any other premises under your control to
9 a search on the basis that the probation officer has reasonable
10 belief that contraband or evidence of a violation of supervised
11 release may be found.

12 The search must be conducted at a reasonable time and
13 in a reasonable manner. Failure to submit to a search may be
14 grounds for revocation. Other residents must be informed of
15 this condition.

16 Is the government seeking forfeiture in this case?

17 MS. ROCAH: No, your Honor.

18 THE COURT: Okay. The defendant shall report to the
19 nearest probation office within 72 hours of release from
20 custody. The defendant may be supervised in the District of
21 his residence.

22 The defendant shall pay to the United States a special
23 assessment of \$900, which shall be due immediately.

24 Based on limited assets, limited earning ability, the
25 fine is waived in this case.

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1 Mr. Bologna, you have the right to appeal the Court's
2 sentence in this case. If you cannot afford the costs of an
3 appeal, you may apply for leave to appeal as a poor person.
4 The time limits for filing a notice of appeal are brief and
5 they are strictly enforced. If you request, the Clerk of Court
6 will prepare and file a notice of appeal on your behalf
7 immediately.

8 Do you understand all of that?

9 MR. BRUNO: Yeah.

10 THE COURT: All right.

11 Let me hear from Mr. Patel. Sir?

12 MR. PATEL: Your Honor, I was just -- I have nothing
13 to add.

14 Your Honor, if I could just speak with the government
15 about --

16 THE COURT: Yes.

17 (Pause)

18 MR. PATEL: Thank you, your Honor.

19 THE COURT: Okay. With regard to surrender, I'm going
20 to set a surrender date in this case about six weeks out.

21 MR. PATEL: Your Honor --

22 MS. ROCAH: He is in custody.

23 THE COURT: Oh, he is in custody.

24 MS. ROCAH: Uh-huh.

25 THE COURT: Okay. Then unnecessary.

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1 So the defendant is remanded.

2 Anything further from the government?

3 MS. ROCAH: No, your Honor.

4 THE COURT: Anything further from the defendant?

5 MR. PATEL: No. Thank you, your Honor.

6 THE COURT: All right. This may be the last

7 sentencing associated with this case.

8 Mr. Goldman, is there anything else coming up?

9 MR. GOLDMAN: Yes, there is.

10 THE COURT: Okay, we'll leave it at that then.

11 Okay, then we're adjourned. Thank you all very much.

12 MR. PATEL: Thank you, your Honor.

13 (Adjourned)

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